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Filed Nov. 6, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

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DRAINAGE COMMISSION OF NEW ORLEANS,
PLAINTIFF IN ERROR,

vs.

MISS LUCRETIA B. WILDER ET ALS., DEFENDANTS IN ERROR.

Brief of Plaintiff in Error, in Reply to Brief of Defendants in Error, on Motion to Dismiss or Affirm.

WILLIAM WIRT HOWE,
Of Counsel for Drainage Commission,
Plaintiff in Error.

NOVEMBER 4, 1899.

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Brief of Plaintiff in Error, in Reply to Brief of Defendants in Error, on Motion to Dismiss or Affirm.

The undersigned filed a brief on this motion October 30, 1899, which was prepared before the brief of movers was received. The brief of movers having been now received, and the court having given time to reply, the following considerations are submitted as supplemental to views already expressed:

I.

As already indicated, the elaborate discussion in the brief of the defendants in error concerning the status of the

Drainage Commission of New Orleans under the State constitution and State laws, and its right to receive, administer, and use the half of the surplus in question, can have no effect in support of the motion in this court to dismiss or affirm. It was purely a question of State law, and has been finally decided by the highest State court in favor of the Drainage Commission. The court of first instance held that the Drainage Commission had no interest, and dismissed its intervention. The supreme court of Louisiana on application for rehearing reversed this ruling and said:

"An examination of this cause on the application for rehearing has brought to our notice that in affirming the judgment of the district court we affirmed that portion of the same which dismissed the intervention of the Drainage Commission of New Orleans as being without any interest in the cause. * * *

"It is now ordered, adjudged and decreed that the judgment of the district court in so far as it dismisses the intervention of the Drainage Commission of New Orleans as having no interest in the cause * * * be annulled, avoided and reversed."

The validity of the drainage laws and the status of the commission are thus definitively settled by the highest State court under the constitution of the State, and this adjudication on a question of State law is everywhere binding.

Cornell *vs.* Fiske, 136 U. S., 152, 174.
In re Duncan, 139 U. S., 449.

Moreover, the defendants in error at the bar have taken no writ of error or appeal, and cannot disturb the conclusion of the State court on this or any other point.

We submit, then, that the defendants in error are mistaken when they assert, at page 31 of their brief, that the Drainage Commission has no standing to champion the rights of its bondholders or contractors. This question has been settled by the supreme court of Louisiana as a question of

State law, as we have pointed out, and its discussion can afford no support here to the motion to dismiss or affirm.

II.

We come now to something central and vital as concerns the motion. The defendants in error argue in many pages that this court may look into the opinions delivered by the supreme court of Louisiana in the instant case, and by some process of ratiocination build up a theory that the highest State court, while denying our rights as specially claimed under two clauses of the Constitution of the United States, has not in reality denied us any right. This, reduced to its lowest terms, seems to us the result of their argument.

Now, in intervening, we joined the Board of Liquidation in opposing the application for a mandamus, and we may refer to the able briefs filed by the counsel of that board in this court. We beg, however, to elaborate one point which seems to us decisive against the motion now under discussion.

On the application for a rehearing, after making the correction above quoted as to the Drainage Commission and another as to the question of interest on the amounts claimed by relators, the supreme court of Louisiana decreed as follows:

"It is further ordered, adjudged, and decreed that the judgment of *the district court*, except as herein altered and amended, be *affirmed*, and our own judgment, except in so far as herein altered and amended, remain *undisturbed*."

The judgment of the district court, as thus affirmed, directed the issue and sale of the bonds as demanded by the relators, defendants in error, without any reservation whatever. It flatly denied every claim in the cause, whether State or Federal, made by the Board of Liquidation and the Drainage Commission. It denied the rights they each

claimed under two clauses of the Constitution of the United States. It held the articles of the Louisiana constitution, 315, 316, and 317, to be valid, which we had asserted to be invalid and in conflict with the contract clause of the Constitution of the United States and the fourteenth amendment.

The first judgment of the supreme court of Louisiana thus left "undisturbed" and which so became final reads as follows:

"It is hereby ordered, adjudged and decreed that the judgment of the district court be and the same hereby is *affirmed*, except as to the interest allowed, which interest is hereby reduced from 5 to 4 per cent.; costs of appeal to be borne by appellee."

Leaving out, then, the corrections made as to the status of the Drainage Commission and the question of interest on relators' claims, the net result is the absolute affirmance of the judgment of the district court denying our Federal rights and directing an immediate and unqualified issue and sale of consolidated bonds, whose purchasers would at once invoke the rule of law to which we shall now refer. They would at once say:

"We have purchased these bonds under a decree of the supreme court of Louisiana, affirming a decree of the civil district court for the parish of Orleans, and neither decree contains any limitation of our rights or any subordination of our bonds. We invoke the well-settled rule of our law that the decree must govern."

What answer could be made to such a holder for value?

The primary fallacy involved in the argument of defendants in error is found in their ignoring this elementary difference between the decrees complained of and the expressions used in the opinion of the supreme court of Louisiana. The jurisprudence of Louisiana on the interpretation and effect of a decree or judgment is perfectly

settled. The opinion and reasons leading up to a decree are called motives (*motifs*), and the judgment or decree is characterized as dispositive (*dispositif*). In determining the meaning and effect of a decree or judgment, the dispositive portion controls. It is the thing adjudged, the *chose jugée*, the basis of *res adjudicata*. In Keane *vs.* Fisher, 10 La. Annual, 261, 262, the rule was applied in a case analogous in principle to that at the bar. The lower judge had predicated his judgment on some distinctions apparently made in a former *opinion* of the supreme court of Louisiana (9 Annual, p. 70). But the court in dealing with the surety in the 10 Annual, 262, pointed out that the reasons given in 9 Annual—the motives—formed no part of the judgment, *which made no change in the judgment of the lower court.* This judgment was affirmed and bound the surety in the case. And the court cited Marcadé, to whose views we shall hereafter refer.

See also Davis *vs.* Wilcoxen, 10 An'l, 640.

In Hill *vs.* Bowman, 14 Louisiana, 445, 446, the court said through Chief Judge MARTIN—

"The original judgment affirmed by us absolutely must have its effect independently of any expression used by this court in affirming it."

In Plicque *vs.* Perret, 19 Louisiana, 318, 324, the same rule was followed on a similar question, the court saying:

"The court (supreme court of Louisiana) proceeded to affirm the judgment of the district court in all its parts. * * * We are bound to consider the judgment of the district court, as forming that of this tribunal, just as much as if it had been copied into our formal decree affirming that of the court below."

In Slocomb *vs.* De Lizardi, 21 Louisiana Annual, 355, 358, where this question was argued by very distinguished

counsel, the same rule was followed and the citation from Marcadé adopted, which may be translated as follows:

"It is well understood that it is only in the dispositive portion of a judgment, and not in its motives, that the thing adjudged is found. * * * And more than this, the dispositive portion itself presents the thing adjudged only respecting those points actually decided, and not those merely enounced. It is by examining the questions on which the parties were in controversy, and which their contest presented—the *quid judicandum*—that we easily come to understand what has been adjudged—the *quid judicatum*."

Applying these elementary and indisputable rules, we fied the court of first instance denying absolutely the Federal rights of the plaintiffs in error, and this denial expressly affirmed.

The arguments, the hypotheses, the "enunciations," in the opinion of the supreme court of Louisiana cannot control the effect of what was thus finally decreed. If the court had ordered a new trial, to be had in conformity with its views as expressed in its *motifs*, the result might have been different. As to this we are not called on to express an opinion as counsel. The court did not order a new trial.

The result is that we have a decree of the district court affirmed against us, denying our Federal rights and asserting the validity of provisions we had claimed to be in conflict with the Federal Constitution. Neither the decree of the district court as affirmed nor the decrees affirming it contain any word recognizing our rights as specially claimed under the two clauses of the Constitution. The lower judge denied them. His judgment in this regard was affirmed by the supreme court of Louisiana. Our writ of error must stand. It presents two Federal rights specially claimed. We oppose the execution of the articles of the constitution of Louisiana on the ground that they were invalid, being in conflict with the Constitution of the United States as to the

contract clause and the fourteenth amendment. Those articles were held valid, and we had a right to our writ.

III.

The prophecies at pages 48–51 of the brief of defendants in error as to the future of the fund dedicated and consecrated to the work of the Drainage Commission will hardly be considered as relevant to the questions involved in the motion. They take a cheerful view of the future, but we cannot build drainage works on the faith of such predictions. We need every cent that belongs to our fund for an enterprise that concerns the health and comfort of the community.

We refer to the other briefs on file, and again ask that the motion be denied.

Respectfully submitted.

WILLIAM WIRT HOWE,
Of Counsel for Drainage Commission,
Plaintiff in Error.

NOVEMBER 4, 1899.

ADDENDUM.—The judgment of the lower judge, as affirmed by the highest court of Louisiana, and if the motion made here be granted, could be enforced by process of contempt and in other ways, according to its terms and without regard to the *motifs* in the opinion of Chief Justice Nicholls. The Board of Liquidation would be told (1) that the act of 1890 and the amendment of 1892 do not contemplate any issue of bonds inferior to others heretofore emitted; and (2) the judgment of the district court, being affirmed, is affirmed according to its terms, and is not to be modified or impaired by enunciations of the organ of the supreme court of Louisiana.